APPENDIX A — ECF NOTIFICATION AFTER THE SEPTEMBER 27, 2007 HEARING INDICATING THE JUDGE IS TAKING ORAL ARGUMENT UNDER ADVISEMENT

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Sent: Thu Sep 27 18:53:24 2007

Subject: Activity in Case 3:04-cv-00513-BR Acumed LLC v. Stryker Corporation Motion Hearing

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U.S. District Court

District of Oregon

Notice of Electronic Filing

The following transaction was entered on 9/27/2007 at 4:52 PM PDT and filed on 9/27/2007

Appendix A

Case Name: Acumed LLC v. Stryker Corporation

Case Number: 3:04-cv-513 <*https://ecf.ord.uscourts.gov/cgi-bin/DktRpt.pl?68212*>

Filer:

Document Number: 257(No document attached)

Docket Text:

MINUTES of Proceedings: Motion Hearing. The pending Motions (Motion for Permanent Injunction Against Stryker's Continuing Wilfull Infringement [231], Motion to Strike New Facts and Arguments From Acumed's Reply to Motion [247], and Motion For Enhancement of Damages For Stryker's Post-Verdict Willful Infringement [241]) are taken under advisement as of 9/27/2007. Paul Vickery, Fred Laney present as counsel for plaintiff(s). Sharon Hwang present as counsel for defendant(s). Court Reporter: Amanda LeGore. Anna J. Brown presiding. (sm)

3:04-cv-513 Notice has been electronically mailed to:

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Appendix A

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APPENDIX B — EXCERPTED TRANSCRIPT OF PROCEEDINGS DATED SEPTEMBER 27, 2007

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

Case No. CV-04-513-BR

September 27, 2007

Portland, Oregon

ACUMED, LLC, a Delaware limited liability company,

Plaintiffs,

v.

STRYKER CORPORATION, ET AL.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

(Oral Argument)

BEFORE THE HONORABLE ANNA J. BROWN, DISTRICT JUDGE

[Commencing at page 64, line 5]

* * *

MS. HWANG: Okay. Your Honor, if I may, with respect to Seagate, I don't think it's irrelevant.

Here, the Federal Circuit articulated exactly what's meant by objective recklessness. Objective recklessness means there was no objectively reasonable infringement or invalidity position. And objectively looking at this case, this Court found twice, in its motion for enhanced — or, I'm sorry. In its order on enhanced damages the first time around and also on — in its order denying attorney's fees, this Court found that this was a close case on the merits. Not only on liability but also on willfulness. Then we go up to the Federal Circuit. The Federal Circuit comes out with a split decision on liability. It says — they recognize that there was certainly evidence there that would tend against willfulness.

Then we also have the situation where with respect to invalidity Stryker relied on the Alta prior art at trial. That was our main invalidity defense. After trial, Smith & Nephew went to the patent office and asked for re-examination of the '444 patent. And that's where the patent is right now.

The primary piece of prior art that the patent office [65] relied on was the Alta prior art. And so they rejected a substantial number of the asserted claims based on the Alta prior art. I think that shows you that this is not an objectively reckless situation.

It doesn't matter what Stryker thought.

THE COURT: Well, Ms. Hwang, you like to be selective about the record. And you like to look at only the evidence that favors your arguments. That's what advocates do.

But I'm not an advocate here. And, frankly, the conduct, as it was described to the jury from the witnesses concerning ignoring advice of counsel and affirmative decision to go forward to put Acumed out of business — as Mr. Vickrey likes to remind us all the time — is very strong evidence.

This is not a helpful piece of argument. And if this is all you're going to go back, I don't want to hear it any more. I've heard it too many times.

* * * *

APPENDIX C — EXCERPTED TRANSCRIPT OF PROCEEDINGS DATED SEPTEMBER 19, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

No. CV 04-0513-BR

Portland, Oregon

September 19, 2005

ACUMED LLC,

Plaintiff,

vs.

STRYKER CORPORATION, STRYKER SALES CORPORATION, STRYKER ORTHOPAEDICS, and HOWMEDICA OSTEONICS CORPORATION,

Defendants.

TRIAL – DAY 5

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE ANNA J. BROWN
UNITED STATES DISTRICT COURT JUDGE

Appendix C

[commencing at page 1121, line 23] * * *

In deciding whether Stryker committed willful infringement, you must consider whether Stryker independently designed its T2 nail or intentionally copied [1122] a product of Acumed covered by the '444 patent; whether Stryker, when it learned of the '444 patent, investigated the scope of the patent and formed a good-faith belief that the patent was invalid or that it was not infringed; whether Stryker had a substantial defense to infringement and reasonably believed that the defense would be successful if litigated; whether Stryker made a good-faith effort to avoid the '444 patent; and whether Stryker relied on a legal opinion that appeared to it to be well-supported and believable and that advised Stryker, one, that the T2 nail did not infringe the '444 patent or, two, that the '444 patent was invalid.

In evaluating Stryker's reliance on the advice of a lawyer, you should consider when Stryker obtained the advice, the quality of the information Stryker provided to the lawyer, the competence of the lawyer's opinion, and whether or not Stryker relied upon the advice. Advice is competent if it was based upon a reasonable examination of the facts and the law relating to validity and/or infringement issues, consistent with the standards and practices generally followed by competent lawyers.

* * * *